IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Crl.Rev.Pet.No. 3759 of 2007()

CRA.72/2006 of ADDL.SESSIONS COURT (ADHOC), ALAPPUZHA
CC.796/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHERTHALA

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

A.F.JENSON, S/O.A.J.FRANCIS, ARACKAL
VEEDU, C/C 10/1600, PALLICHAL ROAD,
THOPPUMPADY VILLAGE, KOCHI TALUK,
KOCHI-5.

BY ADV. SRI.JOHN JUDE ISSAC

RESPONDENTS: RESPONDENTS/COMPLAINANT

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1. O.K.RAVEENDRAN, S/O.KRISHNAN,
OTTATHINGAL HOUSE, WARD NO.1,
EZHUPUNNA SOUTH, KODAMTHURUTHU VILLAGE,
CHERTHALA, ALAPPUZHA DIST.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.S.R.SREEJITH
PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 3759 of 2007

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Dated this the 22nd day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No. 796 of 2002 on the file of the Judl. First Class Magistrate I, Cherthala challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions before me:-

Exts.P1 and P8 cheques were issued under Exts.P14 and P15 agreements as per which those cheques were to be presented only when the bills were obtained and , therefore, presentation of those cheques before the bank was premature and the consequent prosecution was bad.

5. This contention of the revision petitioner was not accepted by both the courts which have rightly held that Exts.P1 and P8 cheques were complete and legal in all respects and that those negotiable instruments could not be treated as bills of exchange and their presentation could not be postponed. I fully endorse the conclusions reached by the courts below. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. Accordingly, the sentence imposed on the revision petitioner is set aside and instead he is

sentenced to pay a fine of Rs.43,800/- (Rupees forty three thousand eight hundred only) which shall be deposited before the trial court within four months from today failing which he shall suffer simple imprisonment for five months by way of default sentence. The fine amount as and deposited shall be paid to the first respondent complainant as compensation under Sec. 357 (1) Cr.P.C.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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